IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 656 OF 2005

Mr. Badrinarayan Bansilal Somani ...Applicant.

V/s

Vinodkumar K. Shah ...Respondent.

Mr. M.K. Kocharekar with Dinesh Adsule for the applicant.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 23/3/2005

P.C.:

1. Heard the learned counsel for the applicant.

2. Applicant is challenging the order passed by the J.M.F.C. Cantonment Court, Pune dated 16/07/2004 by which application of the applicant for reissuance of summons to the Officer of the Income-tax was rejected. The applicant has made the said application for reissuance of summons as earlier, Income Tax Department had refused to accept the summons. Against the said order dated 16/07/2004, applicant filed Revision Application before the Additional Sessions Judge, Pune. However, it was rejected on 11/1/2005. Applicant has filed this application challenging both these orders.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that the case of the applicant was that an amount of Rs 12 lakhs was not paid by the complainant as hand-loan as alleged but it was paid towards the purchase of shares in the Private Limited Company which was managed by the applicant. It was the case of the applicant that the inquiry was conducted by the Income Tax Officer and the said amount was also shown as amount paid in respect of the purchase of shares. It is submitted that to prove the transaction the applicant had filed an application at Exhibit-78 and has prayed for issuance of summons to the Officers of the Income Tax Department. Accordingly, summons was issued. It is also submitted that the advocate on record also tried to serve the summons on the Department but the Officers of the Income Tax Department refused to accept the summons. Thereafter, a fresh application was filed at Exhibit-84 and the prayer was made for reissuance of the summons. However, since the specific name and designation of the concerned Officer was not given, that application was rejected. Thereafter, third application was filed at Exhibit-85 in which details were given by the applicant. Summons was, thereafter, again issued. However, report was not received

regarding service of summons. Thereafter, 4th application was filed at Exhibit-86 and again a request was made for reissuance of summons to the concerned Officer by registered post. Thereafter, again the J.M.F.C. passed an order of reissuance of summons on the same day. However, no report was received. The Trial Court, thereafter, passed an order dated 16/10/2004 and fixed the matter for hearing. This order is being challenged in the present application.

4. I have perused the copy of the complaint. The complaint was filed in 1998. Though several opportunities were given by J.M.F.C.. no steps were taken to serve the concerned Income Tax Officer. The Trial Court, therefore, was right in observing that the applicant was trying to delay the trial. The Trial Court further observed that the directions were received from the High Court to dispose of the case within six months and, therefore, the case was fixed for hearing. This order was challenged by the applicant in the Sessions Court. The Sessions Court also has given cogent reasons and has observed that if the applicant wanted to examine his defence witness, it was his duty to keep the witness present before the Court for examination. The Sessions Court has also

observed that the Revision Application was devoid of merits.

5. In my view, Trial Court has correctly dismissed the application filed by the applicant. It was the duty of the applicant to keep the concerned Officer present. The complaint was filed in 1998. This is obviously an attempt to delay the trial. The trial had been expedited by the directions given by this Court. Applicant had sufficient time to keep his witness present. There is no merit in the submissions made by the learned Counsel appearing for the applicant. Application is, therefore, dismissed.

V.M. KANADE, J.